

the person so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act; or

(2) Whether the evidence shows that the person so charged had no previous history of child labor violations, that the violations themselves involved no intentional or heedless exposure of any minor to any obvious hazard or detriment to health or well-being and were inadvertent, and that the person so charged has given credible assurance of future compliance, and whether a civil penalty in the circumstances is necessary to achieve the objectives of the Act.

(e) An administrative determination of the amount of the civil money penalty for a particular violation or particular violations of section 12 relating to child labor or any regulation issued under that section shall become final 15 days after receipt of the notice of penalty by certified mail by the person so charged unless such person has, pursuant to §580.6 filed with the Secretary an exception to the determination that the violation or violations for which the penalty is imposed occurred.

(f) A determination of the penalty made in an administrative proceeding after opportunity for hearing as provided in section 16(e) of the Act and pursuant to Part 580 of this chapter shall be final.

[40 FR 25792, June 18, 1975, as amended at 56 FR 8679, Feb. 28, 1991; 66 FR 63503, Dec. 7, 2001]

## **PART 580—CIVIL MONEY PENALTIES—PROCEDURES FOR ASSESSING AND CONTESTING PENALTIES**

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**AUTHORITY:** 29 U.S.C. 9a, 203, 209, 211, 212, 213(c), 216; Reorg. Plan No. 6 of 1950, 64 Stat. 1263, 5 U.S.C. App; secs. 25, 29, 88 Stat. 72, 76; Secretary of Labor's Order No. 4-2001, 66 FR 29656; 5 U.S.C. 500, 503, 551, 559; 103 Stat. 938.

**SOURCE:** 56 FR 24991, May 31, 1991, unless otherwise noted.

### **§ 580.1 Definitions.**

As used in this part:

*Act* means the Fair Labor Standards Act of 1938, as amended (52 Stat. 1060 as amended; 29 U.S.C. 201 *et seq.*).

*Administrative law judge* means a person appointed as provided in 5 U.S.C. 3105 and subpart B of part 930 of title 5 of the CFR, and qualified to preside at hearings under 5 U.S.C. 554-557.

*Administrator* means the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, and includes any official of the Wage and Hour Division authorized by the Administrator to perform any of the functions of the Administrator under this part and parts 578 and 579 of this chapter.

*Chief Administrative Law Judge* means the Chief Administrative Law Judge, Office of the Administrative Law Judges, U.S. Department of Labor, Washington, DC 20210.

*Department* means the U.S. Department of Labor.

*Person* includes any individual, partnership, corporation, association, business trust, legal representative, or organized group of persons.

*Secretary* means the Secretary of Labor, U.S. Department of Labor, or a designated representative of the Secretary.

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*Solicitor of Labor* means the Solicitor, U.S. Department of Labor, and includes attorneys of the Office of the Solicitor authorized by the Solicitor to perform functions of the Solicitor under this part.

### § 580.2 Applicability of procedures and rules.

The procedures and rules contained in this part prescribe the administrative process for assessment of civil money penalties for any violation of the child labor provisions at section 12 of the Act and any regulation thereunder as set forth in part 579, and for assessment of civil money penalties for any repeated or willful violation of the minimum wage provisions of section 6 or the overtime provisions of section 7 of the Act or the regulations thereunder set forth in 29 CFR subtitle B, chapter V. The substantive requirements for assessment of civil money penalties are set forth at 29 CFR part 579 (child labor) and part 578 (minimum wage and overtime).

### § 580.3 Written notice of determination required.

Whenever the Administrator determines that there has been a violation by any person of section 12 of the Act relating to child labor or any regulation issued under that section, or determines that there has been a repeated or willful violation by any person of section 6 or section 7 of the Act, and determines that imposition of a civil money penalty for such violation is appropriate, the Administrator shall issue and serve a notice of such penalty on such person in person or by certified mail. Where service by certified mail is not accepted by the party, notice shall be deemed received on the date of attempted delivery. Where service is not accepted, the Administrator may exercise discretion to serve the notice by regular mail.

### § 580.4 Contents of notice.

The notice required by § 580.3 of this part shall:

(a) Set forth the determination of the Administrator as to the amount of the penalty and the reason or reasons therefor;

(b) Set forth the right to take exception to the assessment of penalties and set forth the right to request a hearing on such determination;

(c) Inform any affected person or persons that in the absence of a timely exception to a determination of penalty and a request for a hearing received within 15 days of the date of receipt of the notice, the determination of the Administrator shall become final and unappealable; and

(d) Set forth the time and method for taking exception to the determination and requesting a hearing, and the procedures relating thereto, as set forth in § 580.6 of this part.

### § 580.5 Finality of notice.

If the person charged with violations does not, within 15 days after receipt of the notice, take exception to the determination that the violation or violations for which the penalty is imposed occurred, the administrative determination by the Administrator of the amount of such penalty shall be deemed final and not subject to administrative or judicial review. Upon the determination becoming final in such a manner, collection and recovery of the penalty shall be instituted pursuant to § 580.18.

[69 FR 75405, Dec. 16, 2004]

### § 580.6 Exception to determination of penalty and request for hearing.

(a) Any person desiring to take exception to the determination of penalty, or to seek judicial review, shall request an administrative hearing pursuant to this part. The exception shall be in writing to the official who issued the determination at the Wage and Hour Division address appearing on the determination notice, and must be received no later than 15 days after the date of receipt of the notice referred to in § 580.3. No additional time shall be added where service of the determination of penalties or of the exception thereto is made by mail. If such a request for an administrative hearing is timely filed, the Administrator's determination shall be inoperative unless and until the case is dismissed or the Administrative Law Judge issues a decision affirming the determination.